Service Date: December 12, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Commission's Investigation Into and Refinement of Electric Avoided Cost Based Rates for Public Utility Purchases From Qualifying Cogenerators and Small Power Producers.	)UTILITY DIVISION))DOCKET NO. 83.1.2))ORDER NO. 5017a

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ORDER ON THE MONTANA POWER COMPANY'S
AND THE MONTANA DEPARTMENT
OF FISH, WILDLIFE AND PARKS'
MOTIONS FOR CLARIFICATION AND/OR RECONSIDERATION

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FINDINGS OF FACT

BACKGROUND

1. In November of 1978, the President signed into law the Public Utility Regulatory Policies Act (PURPA) . Section 210 of that Act required the Federal Energy Regulatory Commission (FERC) and state public service commissions to prescribe rules to encourage cogeneration and small power production (COG/SPP). Central to the requirements of Section 210 is the requirement that electric utilities purchase power from qualifying cogeneration and small power electric generating plants (qualifying facilities, QF's).

2. In 1981, the Montana Legislature passed and the Governor signed a bill that created a state "mini-PURPA" 69-3-601 et seq., MCA.

3. In May of 1981, the Montana Commission adopted rules that

established general conditions under which utilities were required to purchase power to QF's. ARM 38.5.1901 through 38.5.1908.

4. On November 10, 1983, the Montana Commission issued Order No. 5017 in Docket No. 83.1.2.

5. In response to Order No. 5017 the Commission received a Motion for Clarification and Reconsideration from the Montana Power Company (MPC). The MPC's motion was received on November 21. 1983. In addition, the Commission received comments and a request for reconsideration of Order No. 5017 from the Montana Department of Fish, Wildlife and Parks (DFWP).

6. This order addresses in turn the motions raised by the MPC and the DFWP.

I. <u>The Montana Power Company's Motions for Clarification</u>

7. <u>Prospective Nature of Order No. 5017.</u> The MPC's first request for clarification regards the prospective nature of Order No. 5017 versus orders from Docket No. 81.2.15:

> Does the PSC intend that the Base Long Term Rate that is to be calculated in accordance with Order No. 5017 will be utilized to adjust the rates adopted in Standard Contracts signed prior to Order No. 5017. If not, what long term rate should be utilized?
>
> Does the PSC intend that the terms and conditions of signed Standard Contracts will not be altered to reflect findings in Order No. 5017?

8. The Commission finds that the intent of Order No. 5017 is prospective: contract provisions and rates in effect prior to Order No. 5017 are unaffected unless the contracts make some provision for later changes in response to Commission orders.

9. As a consequence, it should be clear that each utility must file annually (June of each year) rates reflecting the Commission's orders in Docket No. 81.2.15 so long as one or more qualifying facilities have contracted for the long-term rate option as defined and computed in Order Nos. 4865a, b, and c.

10. In a related area the MPC submitted the following request for clarification:

> As of this date, MPC has not been requested to sign the Standard Short Term Contract having a term of less than four years, which was tariffed by Order No. 4865. If requested by a qualifying facility, shall MPC utilize the Standard Short Term Contract in a modified form, as appropriate, to reflect contract terms and conditions required by Order No. 5017?

11. Any short-term contract signed pursuant to the orders in Docket No. 81.2.15 is unaffected by Order No. 5017; any short-term contract signed since the issuance of Order No. 5017 is subject to the conditions in this order.

12. Exclusion of a Capacity Payment in the 58 Mill Rate. The MPC requests the Commission to replace the word "excludes" with "includes" (p. 14, Finding No. 37, 1. 16) with respect to the components of MPC's 58 mill/kwh cost estimate.

13. The Commission grants said request.

14. Incremental Capital Costs and Pollution Control Bonds. The MPC submitted the following request regarding the makeup of the incremental cost of capital variable for variable "a":

> Referring to Table 4, page 22, does the PSC intend that the incremental cost of capital for pollution control facilities shall be included in MPC's overall incremental weighted cost of capital for Rate Variable "a" (dollar/ kW I base load)?

15. The Commission finds that to the extent the base load facilities, in this case Colstrip 3 and 4, were, in part, financed with pollution control bonds, the same should be included in the incremental cost of capital estimate. The Commission intends to scrutinize each utility's work papers in this regard.

16. Escalating and Partially Levelized Rate Options. The MPC submitted the following three (3) requests for clarification regarding the escalating and partially levelized rate options:

1. Referring to Table 4, page 22, does the PSC intend that the Base Long Term Rate Variables "a" (dollars/kW [base load]) and "b"(dollars/kw [peak load]), which constitute the capital cost element,
   are both to be levelized?

2. Does the PSC intend that the Base Long Term Rate Variables "h" (coal cost dollars/ton) and "k" (variable O&M base load cents/kwh), which constitute variable costs, are to be escalated?

3. Does the PSC intend that the Base Long Term Rate Variables "e" (fixed O&M base load dollars/kW) and "f" (fixed O&M peak load dollars/kW) are to be treated as a

capital cost element or a variable cost?

17. Regarding the first request, variables "a" and "b" are both levelized in the partially levelized case and both escalate in the escalating option.

18. Regarding the second request, variables "h" and "k" are to be escalated each year in the escalating and partially levelized rate options. The basis of the escalation rate shall be the previous year's actual escalation rates . NO.

19. Regarding the third request, the variables "e" and "f" are to be treated as variable costs, as the components of these variables e. g., operating labor and maintenance are subject to inflation.

20. <u>Table 4 Typographical Error Correction</u>. The MPC's assumption that the "$/kW" definition in Table 4 should have read ¢/kwh is correct and is hereby corrected.

21. <u>Actual Cost Estimate of Variable "a"</u>. The MPC submitted the following requests for clarification regarding the estimation of variable "a" and the effective Base Long Term Rate at the time of contract execution:

1. If MPC is permitted to update Colstrip 3 and 4 cost data, then the Base Long Term Rate Variable "a" (dollars/kW) will conform more closely to actual costs. Tariffed rates used in contracts signed on l and after that updated information is filed will, thus, more accurately reflect avoided costs. Does the PSC intend that MPC will in subsequent years file by June updated Colstrip 3 and 4 data reflecting actual costs, until such time a

different resource is chosen by the PSC for use as a model in making avoided cost calculations?

2. MPC likely will execute tariffed contracts prior to a QF producing power. In such instance, will the tariffed rate be calculated based on Base Long Term Rate data inputs available when the contract is executed or will these data inputs be updated and a new rate calculated approximately when the QF begins producing power?

22. Regarding the first request, the Commission finds that by June of each year updated Colstrip 3 and 4 cost data, reflecting actual costs (MPC Data Response No. 11 indicates that the Company will continue making cash flows with AFUDC through year 1987), shall be submitted to the Commission.

23. As stated in Finding No. 50 of Order No. 5017, in each year subsequent to the initial estimate of the Base Long Term Rate, the utilities shall provide revised estimates of the Base Long Term Rate. The initial estimate shall be actual costs in January 1, 1984 dollars; the second estimate (reported in June of 1984) shall be in actual costs and in January 1, 1985 dollars. This process shall continue until the Commission replaces the existing proxies for base load facilities with some other facilities.

24. That is, the Commission may choose at a later date to replace Colstrip 3 and 4 with, for example, the Salem Project. With PP&L, for example, the Commission may substitute Wyodak 2. If and when this substitution takes place, only the escalating (unlevelized) long-term rate option from Order No. 5017 would be affected. All long-term

rates contracted from the date of the substitution would also be affected, however. That is, the levelized and partially levelized rate options that QF's contract for pursuant to Order No. 5017 are not affected.

25. Effective Date of Executed Contracts. Regarding the second request (No. 2 in Finding 21 above), the Commission finds that the rates in effect at the time a contract is signed shall be the rates paid by a utility to a QF, unless the parties have negotiated some alternative agreement.

26. Point of Delivery Versus Point of Interconnection. The MPC requests the Commission to delete certain language pertaining to the point of delivery relative to the point of interconnection.

27. Rather than delete this language the Commission finds an elaboration is in order. The point of interconnection remains as defined in Finding No. 80 of Order No. 5017. The point of generation is at the QF's generator. The point of delivery is wherever the meter is located. The point of delivery may range anywhere in between the point of generation and the point of interconnection.

28. Prospective Adjustments to Levelized Costs. The MPC requested clarification as to whether the PSC's partially and fully levelized rate options are subject to periodic adjustments based on deviation of forecast from actual rates of inflation.

29. The Commission finds that no such adjustment was contemplated in Order No. 5017.

II. The Montana Power Company's Motions For Reconsideration

30. Line Losses. The MPC requests the Commission to reconsider Finding Nos . 61 and 67 and adopt Witness Gregg's 3 .4 percent avoided energy loss calculation.

31. MPC has taken exception to the Commission taking official notice of data in a previous rate case on the grounds that there must be an opportunity for the parties to rebut or explain the information. As the motion suggests, reconsideration can be used for this purpose.

The data objected to is clearly not the basis for the Commission's decision, but was offered merely as illustrative that the line loss factor was grounded in reality. The basis for the Commission's decision was the reasoning of its previous orders in Docket No. 81.2.15 and the deficiencies noted in testimony presented in this Docket. The Commission finds that the 8.3 percent line loss factor shall be retained

32. Charges for Interconnection. The MPC requests the Commission to reconsider Finding No. 89, charges for capital, to include not only the incremental cost of capital, but as well an appropriate allocation of general and common plant and income taxes.

33. The request is granted and applies equally to each utility. In Order No. 5017 the Commission requested each utility to submit various data and resulting long-term levelized rate calculation results. To this request the Commission adds a request for work papers/data showing the calculation of the general and common plant and income tax percents that will be added to the incremental cost of capital estimates.

34. Government Regulation. MPC requested the Commission's reconsideration of the use of a clause in the contract which states that the contract is subject to the Commission's continuing jurisdiction.

MPC has made no argument in its motion that suggests the Commission's reasoning in Order No. 5017 on the issue is faulty, nor has it challenged the testimony upon which the decision is based. The Commission's continuing jurisdiction over purchases of QF power is a matter of law; it need not be reiterated in each contract. Therefore, the motion is denied.

35. Resource Menu Approach. The MPC requests the Commission to reconsider and adopt the resource menu approach described in MPC's testimony. Alternately, the MPC requests the PSC to use Colstrip 3 and 4 costs as a proxy for MPC's resource plan and inflate those costs out to 1996 and then discount back to the appropriate contract year in order to arrive at MPC's avoided cost rates for each contract year.

36. The first request is denied for the reasons set forth in Order No. 5017 (Finding Nos. 29 through 41). The second request is denied on grounds that it is new evidence not aired and subject to intervenor scrutiny in this docket.

III. Environmental Impacts

37. The Montana Department of Fish, Wildlife and Parks has asked that the Commission reconsider its conclusion that environmental consideration cannot be used as a basis for setting avoided cost rates. The Department suggests that the Commission incorporate in its process the hydro site categories developed by the Hydropower Assessment Committee of the Northwest Power Planning Council.

38. To adopt the Department's position would necessarily require adoption at rates below avoided cost. The Commission has been preempted from taking such action by the Federal Energy Regulatory Commission:

> This Commission has set the rate for purchases at a level which it believes appropriate to encourage cogeneration and small power production, as required by § 210 of PURPA. While the rules prescribed under § 210 of PURPA are subject to the statutory parameters, the States are free, under their own authority, to enact laws or regulations providing for rates which would result in even greater encouragement of these technologies. However, State laws or regulations which would provide rates lower than the federal standards would fail to provide the requisite encouragement of these technologies, and must yield to federal law. Summary of Final Rule, 45 Fed. Reg. No. 38, p. 12221.

The Department's motion is, therefore, denied.

CONCLUSION

The Commission has attempted in this proceeding to fairly balance the interests of ratepayers and QF's, a balance that is achieved when rates are set at avoided cost. In addition, in its original order, the Commission, established that insurance policies could be required to cover the utilities' risks with levelized contracts. The negotiating parties might also agree on other mechanisms to protect the ratepayers, including but not limited to, performance bonds or letters of credit. A realistic and accurate avoided cost rate, plus reasonable contract terms such as those mentioned above, will protect ratepayers while at the same time encouraging QF power as is mandated by PURPA.

CONCLUSIONS OF LAW

1. The foregoing findings of fact are hereby incorporated as conclusions of law.

2. Montana-Dakota Utilities Company, Montana Power Company and Pacific Power & Light Company are public utilities within the meaning of Montana law, Sections 69-3-101 and 69-3-601(3), MCA.

3. The Commission properly exercises jurisdiction over the rates, terms, and conditions for the purchase of electricity by public utilities from qualified cogenerators and small power producers. Sections 69-3-102, 69-3-103 and 69-3-601 et seq. MCA. Section 210, Pub. L. 97-617, 92 Stat. 3119 (1978).

4. The rates the Commission has directed the utilities. to file are just and reasonable to Montana ratepayers as they reflect each utility's avoided energy and capacity costs.

5. The objective of encouraging cogeneration and small power production is promoted by the rates, terms, and conditions established by this order.

6. The Commission's rate making decisions are exempt from the requirements of Montana's Environmental Policy Act, 75-1-101 et seq., MCA. The Commission interprets 75-1-201, MCA, as an exception that applies to the Commission's rate making activities. This proceeding is designed to establish rates, and, thus, is included in the exception.

7. Federal law does not allow the Commission to set rates at levels below avoided cost.

8. MPC claims that Order No. 5017 is unlawful and must be vacated. For the reasons stated in the Brief in Opposition to MPC's Motion to Dismiss filed by Ultra systems, which are hereby incorporated in this Conclusion of Law the Commission rejects the claim. The Commission notes that the D. C. Circuit decision upon which it relied so heavily, was reversed by the U.S. Supreme Court.

ORDER

1. MD., MPC and PP&L are ordered to file compliance tariffs pursuant to Order No. 5017 and this Order. The utilities must serve the compliance tariffs and related work papers on all intervening parties in Docket No. 5017.

DONE AND DATED this 12th day of December, 1983 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)

NOTE: Any interested party may request the this decision.

A motion to reconsider must be filed within ten days. See 38.2.4806, ARM.